BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Joint Application of QWEST COMMUNICATIONS INTERNATIONAL INC. AND CENTURYTEL, INC. For Approval of Indirect Transfer of control of Qwest Corporation, Qwest Communications Company LLC, and Qwest LD Corp.	Docket No. UT-100820 SPRINT'S REPLY TO QWEST'S AND CENTURYLINK'S JOINT OPPOSITION TO THE LATE-FILED PETITIONS TO INTERVENE OF CBEYOND AND SPRINT AND MOTION TO AMEND LATE-FILED PETITION TO INTERVENE

I. INTRODUCTION

Sprint Nextel Corporation (formerly Sprint Corporation) d/b/a/ Sprint PCS, SprintCom, Inc., Sprint Spectrum, L.P., and Wireless Co., L.P. ("Sprint Nextel") respectfully submits its Reply to Qwest's and CenturyLink's Joint Opposition to the Late-Filed Petitions to Intervene of Cbeyond and Sprint ("Opposition"). Sprint Nextel also moves to amend its Late-Filed Petition to Intervene to add Sprint Communications Company as a petitioning party included by Sprint Nextel in its Late-Filed Petition to Intervene.

II. DISCUSSION

A. SPRINT NEXTEL HAS PROVIDED GOOD CAUSE FOR LATE INTERVENION, WHICH SHOULD BE GRANTED.

1 Sprint Nextel has established good cause for late intervention under WAC 480-07-355(1)(b) because it could not have filed a timely Petition to Intervene because it did not know of either the filing of the petition for approval or the Notice of Prehearing Conference

until after that conference was held on June 1, 2010. (Jacobson Decl., ¶ 7). Indeed, Sprint Nextel could not have known of the Prehearing Conference date because it was omitted from the Commission service list for the original notice (Jacobson Decl., ¶ 3 Attachment).

2 Without basis Qwest and CenturyLink ("Joint Applicants") contest the truthfulness of Sprint Nextel's statements, claiming that it is "inconceivable" that Sprint Nextel was not aware of this case because of "significant publicity surrounding the merger announcements" (Opposition ¶ 10.). Counsel for Sprint Nextel, like all attorneys, are required by CR 11 and WAC 480-07-345(3) to submit truthful filings to this Commission and Sprint Nextel truthfully advised the Commission that it did not know of the June 1, 2010 Prehearing Conference date. This is established by the fact that Sprint Nextel was not on the service list for the original notice from the Commission! As soon as Sprint learned that this case had been commenced, it promptly filed its late Petition to Intervene. (Jacobson Decl. ¶ 7). There is no reason to believe that Sprint Nextel would not have complied with its obligations under CR 11 and WAC 480-07-345(3), as the Opposition insinuates. Moreover, a lack of actual knowledge of the Prehearing Conference date may constitute "good cause" under WAC 480-07-355(1)(b), particularly when the Commission failed to provide notice. The Commission has not specified the criteria for this test and a good-faith statement like Sprint Nextel's should qualify, or the Commission would be establishing an unrealistic standard of "constructive knowledge" of prehearing conference dates for every telecommunications company that may appear in Commission proceedings.

3 The Joint Applicants' myopic speculation that somehow Sprint Nextel "should have" been aware of the Prehearing Conference date further is belied by several facts. First, apparently the Joint Applicants never attempted to determine if Sprint Nextel received actual

notice of the Prehearing Conference date from the Commission - which Sprint Nextel did not receive. (Jacobson Decl. ¶ 3). The Joint Applicants erroneously assumed that somehow Sprint Nextel was "supposed to know" that they had made their filing and that a specific date had been set for the Prehearing Conference based upon generalized knowledge that Qwest and CenturyLink planned to merge. This assertion violates every principle of due process long recognized by this Commission that a party who receives no actual notice of an actual proceeding should not be penalized. Second, the time period between the notice of the Prehearing and the Prehearing Conference was unusually short in this case. It provided only seven business days of notice. In contrast, the Commission provided sixteen business days notice in the *Frontier/Verizon* merger in Docket No. UT-09-0842 in 2009. In the *Verizon/MCI* merger, Docket No. UT-05-0814 the Commission provided thirteen business days notice. Third, Sprint Nextel's regional counsel who lives and works in San Francisco, California (with responsibility for overseeing regulatory affairs in ten states) was dealing with a personal medical situation between May 18, 2010 Notice of Prehearing Conference and the June 1, 2010 Prehearing Conference. Given all of these circumstances, she did not become aware of this proceeding until June 8, 2010 when she initiated efforts to find out what was going on regarding the Qwest-CenturyLink merger (Jacobson Decl. ¶ 7).

4 This Commission has long recognized and welcomed the participation of intervenors in Commission proceedings. Its intervention rule grants the Commission the discretion to extend the period for filing timely petitions to intervene. WAC 480-07-355(a). In *WUTC v. Puget Sound Energy, Inc.*, UE-090704, UG-090705 the Commission granted a late-filed petition to intervene from an intervenor that was aware of the PSE proceeding and that waited approximately one month after the intervention deadline before filing a petition to intervene.

The administrative law judge allowed the intervention over staff's objection because the procedural schedule was at an early stage and because "the public interest may benefit from having the perspective of a major national gas transportation customer brought to bear" in the proceeding. 2009 WL 2355823.

5 Similarly, *In the Matter of the Petition of Qwest Corporation to be Regulated Under an Alternative Form of Regulation Pursuant to RCW 80.36.135*, Docket No. UT-061626 (Order 03), the Commission granted the Department of Defense's late-filed petition to intervene, filed approximately a month after the Prehearing Conference. The intervenor knew of the Prehearing Conference date but was unable to attend and asked for an extension. The Commission granted the late-filed petition **which Qwest did not object to**.

6 In both of the foregoing cases, the intervenors knew of the deadlines and either could not, or did not, meet them. Here, Sprint Nextel did not and could not know of the deadline. It took action promptly when it did learn of the pendency of this proceeding, which is at an early procedural stage. The Joint Applicants allege no harm or prejudice to the established schedule, which Sprint Nextel has agreed to abide by. Under all of the foregoing circumstances, Sprint Nextel has established sufficient good cause for the granting of leave to file its Late-Filed Petition to Intervene.[1]

B. SPRINT NEXTEL HAS A SUBSTANTIAL INTEREST IN THE PROCEEDING AND THE PUBLIC INTEREST WILL BE SERVED BY ITS CONTINUED PARTICIPATION AND IT WILL NOT IMPERMISSIBLY BROADEN THE ISSUES.

[1] Nothing in the Commission rules or precedent establishes a need to present detailed, extenuating circumstances to justify the filing of a late petition to intervene particularly when the basis for late filing is due to an administrative Commission error. Accordingly, Sprint Nextel concluded that it was not necessary to disclose Ms. Jacobson's personal medical situation, which is a private matter.

7 The Joint Applicants contest Sprint Nextel's interest in this proceeding on two bases. First, they claim that Sprint is not a registered competitive local exchange company doing business in Washington. Sprint Nextel Corporation is the parent of Sprint Communications Company which is its registered CLEC in Washington. To the extent Sprint Nextel inadvertently named its corporate parent in its Late-Filed Petition to Intervene, it moves the Commission for permission to include its registered CLEC, Sprint Communications Company as one of the Sprint Nextel named parties. Indeed, several of the other intervenors do not bear the same name as the registered competitive local exchange carrier on the Commission's website (i.e., PAETEC). No prejudice can be shown to the Joint Applicants for this requested amendment, which removes any question about the fact that Sprint Nextel does business in Washington and is qualified to do so.

8 The Joint Applicants next contend that Sprint will broaden the issues in this case to address access charges. Sprint Nextel's Late-Filed Petition to Intervene establishes the same interest as nine of the other ten companies allowed to intervene.[2] These nine intervenors assert that they have a substantial interest in the proposed transfer of control from Qwest to CenturyTel, Inc. because they rely on interconnection with, and related services and facilities obtained from, Qwest and they want to insure that the proposed transaction will not adversely affect competition in Washington. The Prehearing Conference (Order 02) in this docket found that these petitioners "each demonstrated their substantial interest in this proceeding and that their participation will be in the public interest." Sprint Nextel asserts the same

[2] Covad Communications Company; XO Communications Services, Inc., Pac-West Telecomm, Inc., McCloud USA Telecommunications Services, Inc. dba PAETEC Business Services, Telecom of Washington, LLC, Integra Telecom of Washington, Inc., Electric Lightwave, Inc., Advanced Telecom, Inc., and United Communications, Inc. dba Unicom, Level 3 Communications, LLC, 360networks (USA) inc., Charter Fiberlink WA-CC VII LLC.

interests; namely, that it needs to protect its rights to obtain interconnection and related services and facilities under appropriate rates and conditions in order to provide services to its customers (Late-Filed Petition to Intervene ¶ 5). Access services are an integral part of those services. In sum, there is no difference between the interests of Sprint Nextel and those of other petitioners who have been allowed to intervene. Denying Sprint Nextel the opportunity to do so would deprive it of both due process and equal protection under both federal and state law.

9 Finally, Sprint Nextel committed to not broaden the issues in this docket. Again, the Joint Applicants attack the veracity of this statement, operating on the premise that somehow access charges are not an appropriate issue within the context of this proceeding, when access charges are an important part of the services provided in the interconnection relationships they have between CLECs and themselves. Access charges are an important part of the competitive landscape that must be examined to determine whether the merger will be consistent with the public interest.

III. CONCLUSION

10 The Joint Applicants' Opposition to Sprint Nextel's Late-Filed Petition to Intervene is not well founded in law and/or fact and it should be rejected. Sprint Nextel should be allowed to participate in this proceeding to the same extent as the other nine CLECs granted permission to intervene in Order 02.

RESPECTFULLY SUBMITTED this 22nd day of June, 2010.

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